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LOK SABHA

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The following Bills were introduced in Lok Sabha on the 21st December, 1963:—

BILL No. 63 of 1963

*A Bill further to amend the State Bank of India Act, 1955.*

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the State Bank of India (Amendment) Act, 1963. Short title and commencement

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

23 of 1955 2. In section 2 of the State Bank of India Act, 1955 (hereinafter referred to as the principal Act),— Amendment of section 2.

10 (i) after clause (b), the following clause shall be inserted, namely:—

‘(bb) “chairman” means the chairman of the Central Board;’

(ii) after clause (d), the following clause shall be inserted, namely:—

15 ‘(dd) “Local Board” means a Local Board constituted under section 21;’

(iii) after clause (h), the following clause shall be inserted, namely:—

20 ‘(i) “vice-chairman” means the vice-chairman of the Central Board.’

Amend-  
ment of  
section  
19.

3. In section 19 of the principal Act,—

(a) in sub-section (1)—

(i) in clause (a), the words “, except in the case of first appointments,” shall be omitted;

(ii) for clauses (c) and (d), the following clauses shall be substituted, namely :—

“(bb) the presidents of the Local Boards appointed under sub-section (5) of section 21, *ex officio*;

(c) if the total amount of the holdings of the shareholders, other than the Reserve Bank, whose names are on the principal register three months before the date fixed for election of directors is—

(i) not more than ten per cent. of the total issued capital, two directors,

(ii) more than ten per cent. but not more than twenty-five per cent. of such capital, three directors, and

(iii) more than twenty-five per cent. of such capital, four directors,

to be elected in the prescribed manner by such shareholders;

(d) not less than two and not more than six directors to be nominated by the Central Government in consultation with the Reserve Bank, from among persons having special knowledge of the working of co-operative institutions and of rural economy or experience in commerce, industry, banking or finance;”

(b) sub-sections (2) and (3) shall be omitted.

4. In section 20 of the principal Act,—

(a) in sub-section (2), the words “or, in the case of the first two appointments, the Central Government,” shall be omitted;

Amend-  
ment of  
section  
20.

(b) for sub-section (5), the following sub-section shall be substituted, namely :—

5 “(5) The following provisions shall have effect in relation to directors nominated under clause (d) of sub-section (1) of section 19, to the Central Board reconstituted for the first time on or after the commencement of the State Bank of India (Amendment) Act, 1963, namely :—

10 (i) if the number of such directors holding office at the end of one year from the date of such reconstitution is not more than three, then one of such directors, and if such number exceeds three, then two of them, shall retire at the end of the said year;

15 (ii) if the number of such directors holding office at the end of two years from the date of such reconstitution is not more than three, then one of such directors, and if such number is four, then two of them, shall retire at the end of the said two years;

20 (iii) if the number of such directors holding office at the end of three years from the date of such reconstitution is not more than two, then one of such directors shall retire at the end of the said three years;

(iv) any such director holding office for a period of four years from the date of such reconstitution shall retire at the end of such period;

25 (v) the director or directors to retire at the end of each year under clauses (i), (ii) and (iii) shall be determined by lot.”.

5. For section 21 of the principal Act, the following section shall be substituted, namely :—

Substitution of new section for section 21.

30 “21. (1) There shall be constituted at each place where the State Bank has a local head office, a Local Board which shall consist of the following members, namely :—

Local Boards.

(a) the chairman, *ex-officio*;

35 (b) all such directors elected or nominated to the Central Board under clause (c) or clause (d) of sub-section (1)

of section 19 as are ordinarily resident in the area served by the branch register of the local head office;

(c) six members to be nominated by the Central Government in consultation with the Reserve Bank;

(d) one member to be elected in the prescribed manner by the shareholders, other than the Reserve Bank, whose names are entered in the branch register of the local head office, if the total holdings of such shareholders amount to two and a half per cent. or more of the total issued capital: 5

Provided that a person elected as a member of a Local Board under this clause shall not cease to be a member thereof for reason only that the total holdings as aforesaid fall below two and a half per cent. of the total issued capital, at any time after his election; 10

(e) the secretary and treasurer of the local head office, appointed by the State Bank, *ex officio*. 15

(2) Where as a result of the establishment of any local head office (hereinafter referred to as the new local head office) for any area which is already served by the branch register of another local head office (hereinafter referred to as the existing local head office) a Local Board (hereinafter referred to as the new Local Board) is constituted for the new local head office, any person who is, at the time of such constitution, holding office as a member of a Local Board (hereinafter referred to as the existing Local Board) for an existing local head office under clause (c) or clause (d) of sub-section (1) and is ordinarily resident in the area served by the branch register of the new local head office, shall cease to hold office as member of the existing Local Board and shall become a member of the new Local Board and shall on becoming such member be deemed to have been nominated or, as the case may be, elected to the new Local Board and shall hold office as such member for the unexpired portion of his term of office as a member of the existing Local Board. 20 25 30

(3) Any vacancy caused in the existing Local Board as a result of any member thereof becoming a member of the new Local Board under sub-section (2) shall be deemed to be a casual vacancy and be filled in accordance with the provisions of section 25. 35

(4) Notwithstanding anything contained in clause (d) of sub-section (1),—

5 (a) on the reconstitution of an existing Local Board for the first time on or after the commencement of the State Bank of India (Amendment) Act, 1963, or

(b) on the constitution of a new Local Board under sub-section (2) of which an elected member of an existing Local Board does not in pursuance of that sub-section become a member,

10 the Reserve Bank shall nominate a member in place of the member to be elected under that clause and such nominated member shall be deemed to have been elected under the said clause.

15 (5) The Governor of the Reserve Bank shall, in consultation with the chairman, appoint—

(a) a member of a Local Board nominated or elected under clause (c) or clause (d) of sub-section (1) to be the president thereof, and

20 (b) a member of a Local Board holding office under clause (b) or nominated or elected under clause (c) or clause (d) of that sub-section to be the vice-president thereof.”

6. After section 21 of the principal Act, the following sections shall be inserted, namely:—

25 “21A. (1) Subject to the provisions contained in this section and in sub-section (2) of section 21, a member of a Local Board nominated under clause (c) of sub-section (1) of section 21 or elected under clause (d) of that sub-section shall hold office for two years and thereafter until his successor has been  
30 duly nominated or elected and shall be eligible for re-nomination or re-election, as the case may be;

35 Provided that out of the six members nominated under clause (c) of sub-section (1) of section 21, on the constitution of a new Local Board or the reconstitution of an existing Local Board for the first time on or after the commencement of the State Bank of India (Amendment) Act, 1963, three shall retire

Insertion  
of new  
sections  
21A, 21B  
and 21C.  
Term of  
office of  
members  
of Local  
Board.

at the end of one year and three shall retire at the end of two years from the date of the constitution or, as the case may be, re-constitution of that Local Board, and the members to retire at the end of the first year shall be determined by lot.

(2) A member of a Local Board nominated by the Reserve Bank under sub-section (4) of section 21 shall retire at the expiry of one year from the date of such nomination. 5

(3) A director of the Central Board becoming a member of a Local Board by virtue of the provisions of clause (b) of sub-section (1) of section 21 shall cease to hold office as such member on his ceasing to be a director or on his ceasing to be ordinarily resident in the relevant area. 10

(4) The president and the vice-president of a Local Board shall each hold office for two years or the remaining period of his office as a member of the Local Board, whichever is shorter, and shall be eligible for re-appointment so long as he is a member of the Local Board. 15

Powers of  
Local  
Board.

21B. Save as may otherwise be prescribed and subject to any general or special directions which the Central Board may give from time to time, a Local Board shall, in respect of the area served by the branch register of the local head office for which the Board has been constituted, exercise all powers and perform all functions and duties of the State Bank in relation to any business that may be carried on or transacted by the State Bank under sub-section (1) of section 32 and clauses (i) (excluding the proviso), (ii), (iii), (v) to (ix), (xa), (xii) to (xv), (xvii), (xviii), (xixb) and (xixc) of section 33 and shall exercise such other powers and perform such other functions and duties as may be conferred on or assigned to it by the Central Board. 25 30

Local  
Commit-  
tees.

21C. (1) A Local Committee may be constituted by the Central Board for any area and shall consist of such number of members as may be prescribed.

(2) The chairman shall be an *ex officio* member of every such Local Committee. 35

(3) A Local Committee shall exercise such powers and perform such functions and duties as the Central Board may confer on or assign to it."

7. In section 22 of the principal Act, in sub-section (1),—

Amend-  
ment of  
section  
22.

(a) in clause (d), after the words "managing director," the words "secretary and treasurer," shall be inserted;

5 (b) for the proviso, the following proviso shall be substituted, namely:—

10 "Provided that in the case of a member of Local Board nominated by the Reserve Bank under sub-section (4) of section 21, the disqualification mentioned in clause (h) shall not operate for a period of six months from his becoming such member."

8. In section 24 of the principal Act, in sub-section (3), after the word and figures "section 19", the words, brackets, letter and figures "or any member of a Local Board nominated under clause (c) of sub-section (1) of section 21" shall be inserted.

Amend-  
ment of  
section  
24.

15 9. In section 25 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amend-  
ment of  
section  
25.

20 "(2) Where any vacancy occurs before the expiry of the term of office of a director, other than the chairman, vice-chairman or a managing director or of a member of a Local Board other than the secretary and treasurer, the vacancy shall be filled—

(a) in the case of an elected director or member, by election; and

25 (b) in the case of a director nominated under clause (d) of sub-section (1) of section 19 or a member of a Local Board nominated under clause (c) of sub-section (1) of section 21, by nomination in consultation with the Reserve Bank:

30 Provided that where the duration of the vacancy in the office of an elected director or member is likely to be less than six months, the vacancy may be filled by the remaining directors or members, as the case may be, by co-opting a person not disqualified under section 22."

35 10. After section 31 of the principal Act, the following section shall be inserted in Chapter V, namely:—

Insert-  
tion of  
new sec-  
tion after  
section 31.

"31A. (1) A Local Board shall meet at such time and place and shall observe such rules of procedure in regard to the trans-  
action of business at its meetings as may be prescribed.

Meetings  
of Local  
Boards.

(2) All questions at the meeting shall be decided by a majority of the votes of the members present and in the case of equality of votes, the person presiding at the meeting shall have a second or casting vote.

(3) A member who is directly or indirectly concerned or interested in any contract, loan, arrangement or proposal entered into or proposed to be entered into by or on behalf of the State Bank, shall, at the earliest possible opportunity, disclose the nature of his interest to the Local Board and shall not be present at any meeting of the Local Board when any such contract, loan, arrangement or proposal is discussed unless his presence is required by the other members for the purpose of eliciting information, and no member so required to be present shall vote on any such contract, loan, arrangement or proposal:

Provided that nothing contained in this sub-section shall apply to such member by reason only of his being—

(i) a shareholder (other than a director) holding not more than two per cent. of the paid-up capital in any public company as defined in the Companies Act, 1956, or any corporation established by or under any law for the time being in force in India or any co-operative society, with which or to which the State Bank has entered into or made or proposes to enter into or make, a contract, loan, arrangement or proposal; or

(ii) a director *ex officio* of the State Bank or a director of a subsidiary bank.

(4) If for any reason neither the president nor the vice-president is able to be present at a meeting of the Local Board, any member, other than the secretary and treasurer, elected by the members present from amongst themselves, shall preside at the meeting.

(5) Notwithstanding anything contained in this section, the chairman shall preside at any meeting of a Local Board at which he is present and in the absence of the chairman, the vice-chairman, if he is a member of the Local Board, shall, whenever he is present, preside at such meeting."

Amend-  
ment of  
section 33.

11. In section 33 of the principal Act, in clause (xixb), for the words "seven years", the words "ten years" shall be substituted.



12. In section 36 of the principal Act, to sub-section (1), the following proviso shall be added, namely:— Amendment of section 36

5 "Provided that if the balance in the Integration and Development Fund on the date of declaration of any dividends by the State Bank is rupees five crores or more, no amount shall be paid into that Fund under clause (a) and the dividends payable to the Reserve Bank shall be paid to that Bank; and if such balance on such date is less than rupees five crores, only so much of the dividends then payable as will bring such balance to rupees five  
10 crores shall be paid into that Fund and the balance of such dividends shall be paid to the Reserve Bank."

13. In section 41 of the principal Act, in clause (a) of sub-section (7), for the words "a true and correct view", the words "a true and fair view" shall be substituted. Amendment of section 41.

15 14. Section 43 of the principal Act shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:— Amendment of section 43.

20 "(2) The officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Central Board."

15. Section 48 of the principal Act shall be omitted.

Omission of section 48.

16. In section 50 of the principal Act, in sub-section (2),—

(a) for clause (d), the following clause shall be substituted, namely:— Amendment of section 50.

25 "(d) the powers, functions and duties of Local Boards and the restrictions, conditions or limitations, if any, subject to which they may be exercised or performed, the formation and constitution of Local Committees (including the number of members of any such Committee) and of committees  
30 of Local Boards, the powers, functions and duties of such Committees, the holding of meetings of Local Committees and committees of Local Boards and the conduct of business thereat;"

35 (b) in clause (f), after the words "the Central Board", the words "or of Local Boards" shall be inserted;

(c) clause (h) shall be omitted.

Special  
provisions  
as to  
directors.

17. When the Central Board is reconstituted for the first time under the provisions of section 19 of the principal Act as amended by this Act,—

(a) the chairman and the vice-chairman of the Central Board and the managing directors of the State Bank holding office as such immediately before such reconstitution shall continue to hold their respective offices after such reconstitution for the unexpired portion of the term of their office; 5

(b) all the directors of the Central Board deemed to be elected under the proviso to clause (c) of sub-section (1) of section 19 of the principal Act or nominated under clause (d) of that sub-section and holding office as such immediately before such reconstitution shall be deemed to have vacated their respective offices on such reconstitution; and the remaining directors elected under clause (c), and the directors nominated under clauses (e) and (f), of the said sub-section (1) shall continue to hold office after such reconstitution until their successors are duly elected under clause (c) or, as the case may be, nominated under clauses (e) and (f), of sub-section (1) of section 19 of the principal Act as amended by this Act. 15 20

Vacation  
of office  
by mem-  
bers of  
Local  
Boards.

18. On the reconstitution of any Local Board for the first time under the principal Act as amended by this Act, all members of that Local Board holding office under clause (a) of sub-section (1) of section 21 of the principal Act or elected or nominated under clause (b) of that sub-section and holding office as such immediately before such reconstitution, shall be deemed to have vacated their offices on such reconstitution. 25

## STATEMENT OF OBJECTS AND REASONS

The business and activities of the State Bank of India have increased very considerably, since the bank was established on the 1st July, 1955. It is, therefore, considered desirable that provision should be made for facilitating the creation of a larger number of local head offices, for certain changes in the composition of the Central and Local Boards of the bank and for vesting some specific powers in the Local Boards so as to enable the bank to dispose of its business expeditiously and to improve the quality of its services generally.

2. An integration and development fund was created in 1955 for financing the development activities of the bank. As the balance in the fund is now adequate, it is proposed to modify the relevant provisions of the Act, so as to limit the accumulation in the fund at any time to a sum of Rs. 5 crores.

3. The notes on clauses explain the various provisions of the bill.

NEW DELHI;

T. T. KRISHNAMACHARI.

*The 16th December, 1963.*

*Notes on Clauses*

*Clause 3* provides for the revised constitution of the Central Board. It is proposed that apart from the Chairman, the Vice-Chairman, two Managing Directors and one representative each of the Reserve Bank and the Central Government—

(i) the Presidents of all Local Boards which have been or may be constituted should become Directors of the Central Board by virtue of their office,

(ii) there should be not less than two and not more than four Directors to be elected by shareholders other than Reserve Bank of India whose names are borne on the principal register (as against six directors who are elected at present from the various branch registers), and

(iii) there should be not less than two and not more than six directors to be nominated by Central Government in place of eight directors who are nominated at present.

As the elected members of the Central Board will be chosen in future from the principal register, the number of local head offices, or of branch registers maintained at such offices, will not in future be relevant for the purposes of the constitution of the Central Board or for periodical elections to it and there will in consequence be no implied limit to the number of local head offices which may be constituted from time to time.

*Clause 4* provides for a consequential amendment to section 20 and for the rotation of the directors nominated on the re-constitution of the Central Board for the first time after the commencement of the amended Act.

*Clause 5* provides for the revised constitution of the Local Boards. A Local Board, after re-organisation, will (apart from the members of the Central Board who are also members of the Local Board) consist of eight members instead of four as at present. Six members will be nominated by the Central Government and one member

will be elected by shareholders whose names are entered on the concerned branch register (as against three nominated members and one elected member as provided for at present). The Secretary and Treasurer of the Local Head Office, by virtue of his office, will also be a member of the Local Board. As the Chairman of the State Bank may not attend all meetings of Local Board, a President will be appointed for every Local Board by the Governor of Reserve Bank from the local elected or nominated members of the Board.

*Clause 6* seeks to insert three new sections, namely sections 21A, 21B and 21C, which respectively provide for the term of office of the members of Local Board, the powers of Local Board and the constitution of Local Committees. In order to provide for the expeditious disposal of the business of the bank, the powers of Local Boards are proposed to be increased, particularly in so far as the grant of loans and advances is concerned.

*Clauses 7 to 10* provide for consequential amendments as a result of the provision for the re-constitution of the Local Boards.

*Clause 11* seeks to amend section 33(xixb) so as to permit the State Bank to grant term loans to industrial or commercial units, which may be generally approved for this purpose by the Central Board, for periods up to ten years (instead of seven years as at present).

*Clause 12* amends section 36. When the State Bank of India was established, provision was made for the dividends declared by that bank, and due to be paid to the Reserve Bank of India, to be credited (so far as these dividends relate to 55 per cent of the share capital of the State Bank of India, which is the minimum required to be held by the Reserve Bank of India at any time) to an integration and development fund. This fund was intended and has been utilised for financing the development activities of the bank. As the amount available in this fund is now considered to be adequate, it is no longer necessary to continue the provision for the dividends in question to be credited unconditionally or for an indefinite period to the fund. It is, therefore, proposed that if the credit balance in the fund at the time of the declaration of any future dividend by the State Bank is Rs. 5 crores or more, the dividends due to the Reserve Bank, on the compulsory minimum holding of shares, should be paid to the Reserve Bank, instead of being credited to the fund.

*Clauses 13 to 15.* The amendments proposed are of a clarificatory or drafting nature.

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*Clause 16* provides for certain consequential amendments to section 50 of the State Bank of India Act which deals with regulations for giving effect to the provisions of the Act.

*Clause 17* provides for the continuance in office of the Chairman, Vice Chairman and Managing Directors of the Bank and for the vacation of their office by the directors of the Central Board of the Bank other than those representing the Reserve Bank and the Central Government so as to facilitate the reconstitution of the Central Board under the amended provision.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill seeks to amend section 50 of the Act which empowers the Central Board to make regulations for the purpose of giving effect to the provisions of the Act. The matters in respect of which such regulations may be made have been specified in the said section. The amendment to the section is being proposed with a view to enable the Central Board to prescribe *inter alia* the restrictions, conditions or limitations, if any, subject to which the powers, functions and duties of Local Boards may be exercised or performed, and the number of members of Local Committees. These are matters of a routine or administrative nature. The delegation of legislative powers is thus of a normal character.

## BILL No. 60 OF 1963

*A Bill further to amend the Advocates Act, 1961.*

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short  
title.

1. This Act may be called the Advocates (Amendment) Act, 1963.

Amend-  
ment of  
section 4.

2. In section 4 of the Advocates Act, 1961 (hereinafter referred to as the principal Act), after sub-section (2), the following sub-section shall be inserted, namely:— 5 25 of 1961.

“(3) The term of office of a member of the Bar Council of India elected by a State Bar Council shall be for the period for which he holds office as a member of the State Bar Council, and every such member shall continue to hold office as a member of the Bar Council of India until his successor is elected: 10

Provided that where a member of a State Bar Council who holds office *ex-officio* is so elected, the term of his office shall be two years from the date of his election.” 15

Amend-  
ment of  
section 8.

3. In section 8 of of the principal Act,—

(i) for the words “Bar Council”, the words “State Bar Council” shall be substituted;

(ii) for the words “elected to each such Council”, the words, brackets and figures “elected to each such Council (reconstituted on the expiry of the term of office of the elected members of the State Bar Council under section 54)” shall be substituted. 20



## 4. In section 9 of the principal Act,—

Amend-  
ment of  
section 9.

(i) in sub-section (1), for the words "five", "three" and "two shall be persons", the words "three", "two" and "one shall be a person" shall respectively be substituted;

5 (ii) for sub-section (2), the following sub-sections shall be substituted, namely:—

10 " (2) The Bar Council of India shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and one shall be a person elected by the Council from amongst advocates who are not members of the Council.

15 (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1963 may dispose of the proceedings pending before it as if those sub-sections had not been amended by the said Act."

20 5. After section 10 of the principal Act, the following section shall be inserted, namely:—

Insertion  
of new  
section  
10A.

"10A. An elected member of a Bar Council shall be deemed to have vacated his office if he is declared by the Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council, or if his name is, for any cause, removed from the roll of advocates."

Disqualifi-  
cation of  
members  
of Bar  
Council.

25 6. In section 15 of the principal Act, in sub-section (2),—

(i) for clause (a), the following clause shall be substituted, namely:—

Amend-  
ment of  
section 15.

30 "(a) the election of members of the Bar Council including the conditions subject to which persons can exercise the right to vote, the manner in which election shall be held and the manner in which results of election shall be published;"

35 (ii) in clause (e), for the words "Bar Council", the words "State Bar Council" shall be substituted.

7. In section 16 of the principal Act, in sub-section (4), the following proviso shall be inserted, namely:—

Amend-  
ment of  
section 16.

40 "Provided that where any such senior advocate makes an application before the 31st December, 1964 to the Bar Council maintaining the roll in which his name has been entered that

he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.”.

Amend-  
ment of  
section 18.

8. In section 18 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

5

“Provided that where any such application for transfer is made by a person against whom any disciplinary proceeding is pending or where for any other reason it appears to the Bar Council of India that the application for transfer has not been made *bona fide* and that the transfer should not be made, the Bar Council of India may, after giving the person making the application an opportunity of making a representation in this behalf, reject the application.”.

10

Amend-  
ment of  
section 20.

9. In section 20 of the principal Act, in sub-section (3), for the words “Entries in each part of the common roll shall be in the order of seniority and such seniority shall be determined as follows”, the words “Entries in each part of the common roll shall be maintained in such manner as the Bar Council of India thinks fit and the seniority of an advocate on the common roll shall be determined as follows” shall be substituted.

15

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Substitu-  
tion of  
new sec-  
tion for  
section 22.  
Certificate  
of enrol-  
ment.

10. For section 22 of the principal Act, the following section shall be substituted, namely:—

“22. There shall be issued a certificate of enrolment, in the prescribed form,—

(i) by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act; and

25

(ii) by the Bar Council of India to every person whose name is entered in the common roll without his name having already been entered in any State roll.”.

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Amend-  
ment of  
section 24.

11. In section 24 of the principal Act,—

(A) in sub-section (1),

(i) in clause (c),—

(a) in sub-clause (iii), the words “or elsewhere” shall be omitted;

35

(b) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

“(iv) in any other case, from any University outside the territory of India, if the degree is re-

cognised for the purposes of this Act by the Bar Council of India; or”;

(ii) in clause (d)—

5 (a) the words “after such training” shall be omitted;

(b) in the proviso, for paragraph (i), the following paragraph shall be substituted, namely:—

10 “(i) a person who has obtained a degree in law from any University in India before the 31st day of December, 1963 or a barrister who was qualified as such before the said date or a barrister who, having qualified after that date, has received such practical training in law as may be recognised in this behalf by the Bar Council of India;”;

15 (B) in sub-section (2),—

(i) the words “or who is not a law graduate but was entitled to be enrolled as an advocate of a High Court immediately before the appointed day under any law then in force,” shall be omitted;

20 (C) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Notwithstanding anything contained in sub-section (1), a person who—

(a) before the 1st day of December, 1963—

25 (i) has been an attorney of any High Court or has been an advocate on the roll of the Court of Judicial Commissioner in any Union territory under any law in force in that territory; or

30 (ii) was entitled at any time to be enrolled under any law then in force as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory, or

(iii) has been a pleader for at least five years; or

35 (b) before the 15th day of August, 1947, has been an advocate of any High Court in any area which was comprised within India as defined in the Government of India Act, 1935; or

(c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935,

may be admitted as an advocate on a State roll if he—

(i) makes an application for such enrolment in accordance with the provisions of this Act not later than the 31st day of December, 1964; and

(ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1)."

Amend-  
ment of  
section 26.

12. In section 26 of the principal Act, in sub-section (1), after the words, brackets and figures "sub-sections (2) and (3)", the words "and to any direction that may be given in writing by the State Bar Council in this behalf" shall be inserted.

Amend-  
ment of  
section 28.

13. In section 28 of the principal Act, in clause (b) of sub-section (2), the words "after such training" shall be omitted.

Amend-  
ment of  
section 35.

14. In section 35 of the principal Act, after sub-section (5), the following *Explanation* shall be added, namely:—

*"Explanation.*—In this section, the expressions "Advocate-General", and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor-General of India."

Amend-  
ment of  
section 54.

15. In section 54 of the principal Act,—

(i) the words "the Bar Council of India and" shall be omitted;

(ii) the following proviso shall be inserted, namely:—

"Provided that such members shall continue to hold office until the State Bar Council is reconstituted in accordance with the provisions of this Act."

Amend-  
ment of  
section 58.

16. In section 58 of the Principal Act, in sub-section (4), for the words "the issue and renewal", the words "the renewal or the issue by way of renewal" shall be substituted.

Insertion  
of new  
sections  
58A and  
58B.

Special  
provisions  
with res-  
pect to  
certain  
advocates.

17. After section 58 of the principal Act, the following sections shall be inserted, namely:—

"58A. (1) Notwithstanding anything contained in this Act, all advocates who, immediately before the 26th day of July, 1948, were entitled to practise in the High Court in Allahabad or the Chief Court in Oudh and who under the provisions of the United

Provinces High Courts (Amalgamation) Order, 1948 were recognised as advocates entitled to practise in the new High Court of judicature at Allahabad but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non-payment of the fee payable to the Bar Council of the said High Court shall, for the purposes of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Uttar Pradesh.

(2) Notwithstanding anything contained in this Act, all advocates who, immediately before the 10th day of October, 1952 were entitled to practise in the High Court of Hyderabad but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non-payment of the fee payable to the Bar Council of the said High Court shall, for the purposes of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Andhra Pradesh.

(3) Notwithstanding anything contained in this Act, all advocates who, immediately before the 1st day of May, 1960 were entitled to practise in the High Court of Bombay and who applied to get their names entered on the roll of advocates of the High Court of Gujarat under the provisions of section 8 of the Indian Bar Councils Act, 1926 but whose names were not so entered by reason of the repeal of the said provision shall, for the purposes of clause (a) of sub-section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of the High Court of Gujarat under the said Act and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Gujarat.

58B. (1) As from the 1st day of September, 1963, every proceeding in respect of any disciplinary matter in relation to an existing advocate of a High Court shall, save as provided in the first proviso to sub-section (2), be disposed of by the State Bar Council in relation to that High Court, as if the existing advocate has been enrolled as an advocate on its roll.

(2) If immediately before the said date there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926, such proceeding shall stand trans-

Special provision relating to certain disciplinary proceedings.

ferred to the State Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub-section (1) of section 56:

Provided that where in respect of any such proceeding the High Court has received the finding of a Tribunal constituted under section 11 of the Bar Councils Act, 1926, the High Court shall dispose of the case and it shall be lawful for the High Court to exercise for the purpose all powers conferred on it under section 12 of the said Act as if that section has not been repealed: 5 38 of 1926.

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Provided further that where the High Court has referred back any case for further inquiry under sub-section (4) of section 12 of the said Act, the proceeding shall stand transferred to the State Bar Council in relation to that High Court as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub-section (1) of section 56. 15

(3) If immediately before the said date there is any proceeding in respect of any disciplinary matter pending in relation to any pleader, vakil or attorney, who has been enrolled as an advocate on any State roll under the Act, such proceeding shall stand transferred to the State Bar Council on the roll of which he has been enrolled and be dealt with under this Act as if it were a proceeding arising against him thereunder. 20

(4) In this section "existing advocate" means a person who was enrolled as an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 and who, at the time when any proceeding in respect of any disciplinary matter is initiated against him, is not enrolled as an advocate on a State roll under this Act. 25 38 of 1926

(5) The provisions of this section shall have effect, notwithstanding anything contained in this Act." 30

## STATEMENT OF OBJECTS AND REASONS

The working of the Advocates Act, enacted in May, 1961, has revealed certain practical difficulties and representations in this behalf have been received from various State Bar Councils and other associations. The Bar Council of India has also suggested certain amendments to the Act. Difficulties were being experienced mainly in regard to the functioning of the Bar Councils and the Committees thereof and also in regard to the enrolment as advocates of certain classes of persons who may not fall strictly within the scope of sections 17 and 24 of the Act.

2. It is considered necessary that the Act should be suitably amended for removing such difficulties and for facilitating the implementation of its provisions. The principal amendments proposed in the Bill are—

(1) that the term of office of a member of the Bar Council of India elected by a State Bar Council should normally be for the same period for which he holds office as a member of a State Bar Council;

(2) that the Bar Council of India should be empowered to form more than one disciplinary committee, and that the disciplinary committee of a Bar Council should consist of three members only;

(3) that the Bar Council of India should be empowered to refuse, in suitable cases, the applications for the transfer of the name of an advocate from one State roll to another;

(4) that the Bar Council of India should be permitted to prepare and maintain the common roll in such manner as it thinks fit;

(5) that certain categories of persons who may not at present be entitled to be enrolled as advocates should be so entitled;

(6) that the State Bar Council should have more effective control over its enrolment committees; and

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(7) that the disciplinary jurisdiction of State Bar Councils should be extended to certain proceedings which are not at present covered by the Act.

3. The Bill seeks to achieve these objects. Opportunity has also been taken to make certain other amendments of a minor character.

4. The notes on clauses appended to the Bill explain the provisions thereof.

NEW DELHI;

*The 7th December, 1963.*

A. K. SEN.



Notes on clauses

*Clauses 2, 3 and 15.*—These clauses seek to amend sections 4, 8 and 54 of the Act. Under section 8 of the Act, the term of office of elected members of the Bar Council of India and of State Bar Councils is six years, and one-third of the members has to retire on the expiration of every second year. The Bar Council of India consists mainly of elected representatives of State Bar Councils, and the principle of rotation which has been introduced, both in the Bar Council of India and the State Bar Councils, may enable a member of the Bar Council of India to continue in office even after he has ceased to be a member of the State Bar Council. This is an anomalous position. Clause 2 seeks to amend section 4 to provide that the term of office of a member of the Bar Council of India elected by a State Bar Council should be for the same period for which he holds office as a member of a State Bar Council. It further provides that where the Advocate-General of a State who is an *ex officio* member of the State Bar Council, is elected to the Bar Council of India, he should hold office for two years only from the date of his election.

The existing section 8 provides for the term of office of members of the Bar Council of India as also of the State Bar Councils. In view of the amendment made by clause 2 relating to the term of office of the members of the Bar Council of India, clause 3 restricts the application of this section to State Bar Councils only.

Under section 54 of the Act, the term of office of elected members of a State Bar Council constituted for the first time is two years. Clause 3 (ii) seeks to make it clear that the provisions of section 8 shall apply to a State Bar Council when it is reconstituted on the expiry of the term of office specified in section 54.

In view of the amendment made to section 4, the provisions of section 54 have also been restricted to State Bar Councils only. The election to the various State Bar Councils may not be complete before the expiry of the term of their members under section 54. To overcome this difficulty, it has been provided in clause 15 that the elected members of a State Bar Council shall continue to hold office until it is reconstituted in accordance with the provisions of the Act.

*Clause 4.*—Under section 9, the disciplinary committee of a Bar Council is to consist of five members. It is felt that this makes the

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committee unwieldy. The strength of the committee is therefore proposed to be reduced to three.

It is further considered desirable that the Bar Council of India should also have the power to constitute more than one disciplinary committee. Section 9 is being amended for the purpose.

*Clause 5.*—There is no provision in the Act relating to disqualification of members. The proposed section 10A specifies the circumstances under which an elected member of a Bar Council shall be deemed to have vacated his office.

*Clause 6.*—Section 15 deals with the power of a Bar Council to make rules. This clause seeks to amend this section to make it clear that the rules may lay down the conditions subject to which persons can exercise the right to vote.

*Clause 7.*—By virtue of sub-section (4) of section 16 of the Act, the advocates of the Supreme Court who were senior advocates on 1st December, 1961 automatically became senior advocates under the Act. The senior advocates are subject to certain restrictions in the matter of practice as prescribed by the Bar Council of India. It is proposed to give such advocates an option to relinquish their status as senior advocates and become ordinary advocates of the Supreme Court.

*Clause 8.*—Section 18 of the Act provides for the transfer of the name of an advocate from one State roll to another. When a person makes an application for such transfer, the Bar Council of India has no discretion in the matter and it has to issue necessary directions for such transfer. There may be cases where the transfer of the name of a person from one State roll to another is undesirable and the Bar Council of India should be empowered to reject an application for transfer in suitable cases, after giving the applicant a reasonable opportunity of representing his case. This clause seeks to amend the section for the purpose.

*Clause 9.*—Under section 20 of the Act, the Bar Council of India has to prepare and maintain a common roll of advocates in the order of seniority. The Bar Council of India has pointed out that preparation of the common roll after fixing *inter se* seniority of advocates all over India will be a laborious task and that the preparation of the common roll may therefore be delayed. This clause seeks to amend section 20 to enable the Bar Council of India to decide the manner in which the common roll shall be maintained.

*Clause 10.*—Section 22 deals with the issue of certificate of enrolment. In cases where the State Bar Councils have issued the certificates of enrolment, there may be no necessity for the Bar Council of India to issue a fresh certificate again. This clause seeks to amend the section to that effect.

*Clause 11.*—Section 24 of the Act prescribes the qualifications which a person is required to possess for enrolment as new advocates. It has been brought to the notice of Government that certain classes of persons who were treated as advocates or who were entitled to be enrolled as advocates before the commencement of Chapter III of the Advocates Act would not strictly fall within the scope of section 24. It is also considered necessary to enlarge the scope of section 24 to cover certain other classes of persons as well who by reason of their training or experience should be eligible for enrolment whether they are law graduates or not. The proposed sub-section (3) of section 24 specifies the various classes of persons who should be entitled to be enrolled as advocates. They are as follows:—

- (i) advocates on the roll of Judicial Commissioners' Courts,
- (ii) attorneys of High Courts,
- (iii) advocates of the Chief Court of Sind before 15th August, 1947,
- (iv) advocates of Rangoon High Court before 1st April, 1937,
- (v) all persons who were entitled to be enrolled as advocates of a High Court (including a High Court of a former Part B State), or of a Judicial Commissioner's Court, and
- (vi) all pleaders who have put in five years of practice before 1st December, 1963.

The Act was amended by Act 32 of 1962 exempting law graduates who passed the final law examination before the 28th February, 1963, from undergoing training and passing the examination conducted by the Bar Council. Since the necessary arrangements for the implementation of the scheme of training could not be completed by all the State Bar Councils, it is proposed to extend the said period of exemption from 28th February, 1963 to 31st December, 1963. It is also proposed to enable the law graduates to pass the examination even during the course of training.

Other amendments are of a clarificatory nature.

*Clause 12.*—Section 10 of the Act provides for the constitution of an enrolment committee and section 26 deals with the functions of the enrolment committee. As a committee of the State Bar Council, the enrolment committee should carry out the functions subject to any rules that may be made or any directions that may be given by the Bar Council. This clause seeks to amend section 26 to make the position clear.

*Clause 16.*—As the Act provides for one class of legal practitioners only, namely, advocates, it is proposed to make it clear that under section 58 (4), there should not be any fresh enrolment of pleaders or other class of legal practitioners. Certificates may, however, be issued to existing legal practitioners by way of renewal.

*Clause 17.*—The Chief Court of Oudh and the High Court of Allahabad were amalgamated by an order made in 1948 and a new High Court of Allahabad was constituted. The advocates of both the High Courts were recognised as advocates of the new High Court but they were required to pay ten rupees each for enrolment as advocates in the new High Court. Many advocates did not pay this amount and they were not formally enrolled as advocates of the new High Court. A like situation has arisen in respect of certain advocates of the former State of Hyderabad as well. Similarly on the reorganisation of the Bombay State in May, 1960 a new High Court of Gujarat was constituted and many of the advocates of the Bombay High Court who opted for Gujarat could not get themselves enrolled within the prescribed time. It is necessary to make suitable provision to enable these persons to get enrolled as advocates. Proposed new section 58A is intended to achieve this purpose.

Chapter V of the Act deals with disciplinary jurisdiction of the Bar Councils and it has been brought into force from 1st September, 1963. Under the Chapter, a disciplinary committee of a State Bar Council can take action only against those advocates who are on the State roll. The State rolls are not complete and there are many advocates who have not yet been enrolled as advocates under the new Act. It is necessary to make suitable provision relating to disciplinary matters in respect of them. It is also necessary to make suitable provision for the disposal of disciplinary proceedings pending at the commencement of Chapter V. A Removal of Difficulties Order was issued at the time of enforcement of that Chapter. It is proposed to incorporate the provisions of that order in the Act so that the validity of the order may not be challenged in a court of law. Proposed new section 58B is intended to achieve the purpose.

### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill seeks to amend section 15 of the Act which deals with the rule making power of the Bar Councils. It is proposed to make it clear that the rules may also lay down the conditions subject to which persons can exercise the right to vote. Clause 9 purports to amend section 20 of the Act leaving it to the Bar Council of India to decide the manner in which the common roll shall be maintained.

The delegation of legislative power is of a normal character.

M. N. KAUL,  
*Secretary.*

